IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CRIMINAL JURISDICTION

CRIMINAL REVISION APPLICATION NO.486 OF 2002

Shri Santosh Waman Gholap ..Applicant

Versus

The State of Maharashatra & Ors..Respondents

Shri R.S. Kate, for the Applicant
Ms. G.P. Mulekar, A.G.P. for the State

CORAM: F.I. REBELLO & ANOOP V.MOHTA, JJ.
DATE : 1st September,2004

P.C.: 1. Respondents though served have failed to appear. In terms of the order of this Court dated 22nd July, 2004 learned Counsel for the applicant produces receipt evidencing deposit of Rs.36,000/- before the Family Court on 30th August, 2004.

2. After considering the impugned order we find that there has been no proper application of mind in so far as fixation of maintenance in so far as respondent No.2 wife. It is no doubt true that in the absence of material it was open to the Family Court to consider totality of the circumstances and arrive at a finding on the earning capacity of the petitioner but could not have been based on assumptions.

Considering the above, the following order:-

(i) Maintenance awarded in favour of Respondent No.3-son is not disturbed.

(ii) In so far as Respondent No.2 is concerned, we set aside the order of grant of maintenance at the rate of Rs.1,500/- per month and fix interim maintenance at Rs.750/- per month pending the hearing and final disposal of the

Criminal Revision Application before the Family Court.

(iii) At the bar on behalf of the petitioner Counsel submitted that the petitioner is willing to take back the respondents 2 and 3. The Family Court will consider the plea and if need be permit the petitioner and respondents to lead evidence on that point and to take assistance of Councillor attached to Family Court for the purpose of finding out whether it possible to amicably resolve the dispute between the petitioner and respondents.

(iv) Out of the amount deposited the respondents 2 can withdraw amount deposited for the son. In so far as the respondent No.2 is concerned the respondent No.2 can withdraw 50%. Rest of the amount deposited will be subject to the final order passed by the Family Court.

(v) Criminal Revision Application partly allowed in the aforesaid terms.

(vi) The applicant to appear before the Family Court on 20th September, 2004 for further directions. If the Respondents herein are not present the Family Court to issue notice to the Respondents. Criminal Revision Application disposed of accordingly.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J)